

1 Honorable Christopher M. Alston  
2 Chapter 7  
3 Location: Seattle

4  
5 UNITED STATES BANKRUPTCY COURT  
6 WESTERN DISTRICT OF WASHINGTON

7 In re:

8 No. 17-14070

9 REYNALDO VINLUAN,

10 Debtor.

11 EDMUND J. WOOD, Trustee of the Estate of  
12 Reynaldo Vinluan,

13 Plaintiff,

14 Adv. No.

15 COMPLAINT TO AVOID SECOND  
16 POSITION LIEN

17 vs.

18 UNITED PACIFIC MORTGAGE INC., a  
19 Washington corporation; AVENTUS INC., a  
20 Nevada corporation; MORTGAGE  
21 ELECTRONIC REGISTRATION SYSTEMS  
22 INC., a Delaware corporation doing business  
23 in the State of Washington; MERSCORP  
24 HOLDINGS INC., a Delaware corporation  
25 doing business in the State of Washington;  
LCS FINANCIAL SERVICES  
CORPORATION, a Colorado corporation  
doing business in the State of Washington;  
and OCWEN LOAN SERVICING LLC, a  
Delaware limited liability company doing  
business in the State of Washington,

26 Defendants.

27  
28 COMES NOW the Plaintiff, Edmund J. Wood, by and through the undersigned attorney,  
and states and alleges as follows:

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Suite 207  
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(206) 682-5002

COMPLAINT TO AVOID SECOND POSITION LIEN - 1

## **I. PARTIES AND JURISDICTION**

1. Plaintiff. Plaintiff is the duly appointed and acting Chapter 7 Trustee in the Chapter 7 Bankruptcy Petition of the debtor above named. The Trustee is authorized to bring this action pursuant to §§ 502 (b)(1), 506 (d), 544 and 551 of the Bankruptcy Code and does so solely in his capacity as Trustee for the estate of Reynaldo Vinluan.

2. Debtor. The debtor filed the present Chapter 7 Bankruptcy Petition on September 15, 2017.

3.       Defendant Aventus Inc. Upon information and belief, Defendant Aventus Inc. (hereinafter referred to as “Defendant Aventus”) was a Nevada corporation formed on or about December 12, 2003. Upon information and belief, Defendant Aventus’ corporate status with the Nevada Secretary of State was “permanently revoked” some time after the filing of its last annual report on or about February 15, 2006.

4. Defendants Mortgage Electronic Registration Systems Inc. and MERS  
CORP Holdings Inc. Upon information and belief, Defendant Mortgage Electronic Registration Systems Inc. is a Delaware corporation doing business in the State of Washington. Upon information and belief, Defendant MERSCORP Holdings Inc. is the parent company of Defendant Mortgage Electronic Registration Systems Inc. and is a Delaware corporation doing business in the State of Washington. Collectively, these Defendants are hereinafter referred to as “Defendant MERS”.

5. Defendant LCS Financial Services Corporation. Upon information and belief, Defendant LCS Financial Services Corporation (hereinafter referred to as “Defendant LCS”) is a Colorado corporation doing business in the State of Washington.

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1       6.       Defendant Ocwen Loan Servicing LLC. Upon information and belief, Defendant  
2 Ocwen Loan Servicing LLC (hereinafter referred to as “Defendant Ocwen”) is a Delaware  
3 limited liability company doing business in the State of Washington.  
4

5       7.       Jurisdiction. This adversary proceeding is one arising in the Chapter 7 case of the  
6 above named debtor now pending in this Court. This Court has jurisdiction over this adversary  
7 proceeding pursuant to 28 U.S.C. §§ 151, 157, 1334. This adversary proceeding is commenced  
8 pursuant to BR 7001 *et seq* and 11 U.S.C. §§ 502 (b)(1), 506 (d), 544 and 551.  
9

10      8.       Venue. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core  
11 proceeding under 28 U.S.C. § 157 (b)(2)(A), (B), (K) and/or (O).  
12

## 13                   **II. FIRST CAUSE OF ACTION** 14                   **11 U.S.C. § 506 (d)**

15      9.       Plaintiff re-alleges and incorporates by reference each and every allegation set  
16 forth in paragraphs 1 through 8 above, inclusive as though fully set forth herein.  
17

18      10.      On or about December 12, 2006, the debtor executed a Note in favor of “United  
19 Pacific Mortgage, a dba of Aventus, Inc., a Nevada Corporation” in the principal amount of  
20 \$54,000.00 (the “Note”).  
21

22      11.      On or about December 14, 2006, a Deed of Trust dated December 12, 2006 was  
23 recorded against the debtor’s condominium located at 303 23<sup>rd</sup> Ave S, Unit 606, Seattle, WA  
24 (APN 8726630560), legally described as:  
25

26                   Unit 606 of TWENTY-THIRD & MAIN, a condominium, according to the Declaration  
27 thereof recorded under King County Recording No. 20001101000944, and any  
28 amendments thereto, and in Volume 169 of Condominiums, pages 54 through 63, records  
of King County, Washington  
as a second encumbrance in the amount of \$54,000.00 (King County Recorder’s Recording No.

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1 20061214002368) (the “Deed of Trust”).

2 12. The Deed of Trust named Defendant Aventus as the “Lender” and Defendant  
3 MERS as both “Beneficiary” and “nominee for Lender”.

4 13. Upon information and belief, and Plaintiff thereupon alleges, no assignment of the  
5 Deed of Trust has been recorded with the King County Recorder following the permanent  
6 revocation of Defendant Aventus’ corporation good standing by the Nevada Secretary of State.

7 14. Notwithstanding the preceding paragraph, upon information and belief, and  
8 Plaintiff thereupon alleges, Defendant Ocwen is or was the “account’s current creditor”.

9 15. Upon information and belief, and Plaintiff thereupon alleges, the servicer engaged  
10 by either Defendant Aventus, its successors and assigns, Defendant Ocwen, or Defendant MERS  
11 is and/or was Defendant LCS.

12 16. Upon information and belief, and Plaintiff thereupon alleges, the debtor ceased  
13 making payments on this encumbrance in August 2010, if not earlier. Since that time, neither  
14 Defendant Aventus, Defendant MERS, Defendant Ocwen, nor the servicer, Defendant LCS, have  
15 made any effort to enforce the obligation on the Note.

16 17. 11 U.S.C. § 506 (d) provides “To the extent that a lien secures a claim against the  
17 debtor that is not an allowed secured claim, such lien is void”.

18 18. Pursuant to RCW 4.16.040 (1) an action upon a contract in writing is required to  
19 be commenced within six years.

20 19. In turn, RCW 7.28.300 provides that the record owner of real estate may maintain  
21 an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an  
22 action to foreclose such mortgage or deed of trust would be barred by the statute of limitations

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1 and may have a judgment quieting title against such a lien.

2 20. Pursuant to 11 U.S.C. § 541, Plaintiff is the proper party to bring this action and  
3 has stepped into the debtor's shoes as "record owner" for the purposes of RCW 7.28.300.  
4

5 **II. SECOND CAUSE OF ACTION**  
6 **11 U.S.C. § 544**

7 21. Plaintiff re-alleges and incorporates by reference each and every allegation set  
8 forth in paragraphs 1 through 20 above, inclusive as though fully set forth herein.  
9

10 22. Pursuant to 11 U.S.C. § 544, Plaintiff has, as of the commencement of the case,  
11 the power to avoid an obligation incurred by the debtor by a judicial lien creditor that extends  
12 credit to the debtor at the time of the commencement of the case.

13 23. Pursuant to 11 U.S.C. § 551, any transfer avoided under 11 U.S.C. § 544, or any  
14 lien void under 11 U.S.C. § 506 (d), is preserved for the benefit of the estate.  
15

16 **III. THIRD CAUSE OF ACTION**  
17

18 24. Plaintiff re-alleges and incorporates by reference each and every allegation set  
19 forth in paragraphs 1 through 23 above, inclusive as though fully set forth herein.  
20

21 25. Upon information and belief, Defendant United Pacific has not endorsed the Note  
22 to Defendant Ocwen, nor the note endorsed in blank. As the transfer of the Note has not been  
23 accomplished, the Deed of Trust that purportedly secures the same should be avoided.  
24

25 WHEREFORE, Plaintiff prays for judgment on this complaint, as may be amended from  
26 time to time, as follows:  
27

28 a) For avoidance of the Deed of Trust in favor of Defendant(s) pursuant to 11 U.S.C.  
29 § 506 (d);  
30 b) For avoidance of the Deed of Trust in favor of Defendant(s) pursuant to 11 U.S.C.  
31

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§ 544;

c) For a finding by the Court that the transfer avoided herein is preserved for the benefit of the estate pursuant to 11 U.S.C. § 551;

d) For recovery of attorney fees and costs, to the extent recoverable under applicable law and the evidence submitted to the Court; and

3) For such further relief as this Court deems just in the premises.

DATED this 26<sup>th</sup> day of March, 2018.

/s/ Kathryn A. Ellis

Kathryn A. Ellis, WSBA #14333

Attorney for Plaintiff

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**COMPLAINT TO AVOID SECOND POSITION LIEN - 6**